

COUNTY OF LINCOLN

New Mexico Regular Meeting Board of County Commissioners

Preston Stone, Chair
Dallas Draper, Vice Chair

Thomas F. Stewart, Member
Elaine Allen, Member
Lynn Willard, Member

Minutes Tuesday, April 21, 2015

Minutes of the Regular Meeting of the Lincoln County Commission held at 8:30 AM on April 21, 2015 in the County Commission Chambers, Lincoln County Courthouse, in Carrizozo, New Mexico.

1. Call to Order

Chair Stone called the Regular Meeting of the Board of County Commissioners to order at 8:30:11 AM.

2. Roll Call

Roll Call.

Present: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Others present included Nita Taylor, County Manager; Alan Morel, County Attorney; and Rhonda Burrows, County Clerk.

3. Invocation

The invocation was presented by Pastor Barbara Buttram.

4. Pledge of Allegiance

- a. Pledge – US Flag
- b. Salute – NM Flag

5. Approval of Agenda

Motion: Acceptance of the Agenda and authorized the Chair to move items as necessary,

Action: Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Allen.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

6. Approval of Minutes

- a. March 13, 2015 - Emergency Commission Meeting
- b. March 17, 2015 - Regular Commission Meeting
- c. March 19, 2015 - Special Commission Meeting

Motion: Approve the minutes of the March 13, 2015 Emergency Meeting, March 17, 2015 Regular Commission Meeting, and the March 19, 2015 Special Commission Meeting.

Action: Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Willard.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

7. Approval of Consent Agenda

- a. Payroll/Accounts Payable/Budget/ Expenditures
- b. Treasurer's Financial Report for the Month ending March 31, 2015
- c. 2015 Fire Fund Distribution Applications

- d. Road Name Request
- e. Carrizozo Soil & Water Conservation District Mill Levy Resolution 02-2014-2015

Motion: Approval of Consent items as presented, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Stewart.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

SEE EXHIBIT A: Copies of Consent Items are attached hereto in reference thereto made a part hereof.

17. Manager's Report

1. Hat's Off: Manager Taylor informed LeeRoy Zamora Sr. was retiring after 25 years of service with Lincoln County. Ms. Taylor commented on Mr. Zamora's history of work for multiple County Manager's and expressed her appreciation for his services over the years. Paul Baca, Assessor, Beverly Calaway, Treasurer, Rhonda Burrows, Clerk and Renee Montes, Director of Senior Services all commented on Mr. Zamora's valued assistance over the years.

8. Smokey Bear District Ranger Update

Ms. Taylor informed Ranger David Warnack was currently on temporary assignment on the Gila National Forest. Ms. Taylor stated Christina Thompson, the Acting District Ranger, was unable to attend today's meeting. Ms. Taylor provided a copy of the briefing listing current activities on the Ranger District including information on a public meeting in March to discuss the Forest Plan Revision; a recent increase from "Low" to "Moderate" in fire danger; and the current full staffing of seasonal fire crews.

Chair Stone commented on the importance of Lincoln County providing input on the Forest Revision Plan.

11. Potential Property Purchase Sun Valley Station-Bonito Fire Department

Ms. Taylor presented a request from Chief Carl Bartley of the Bonito Fire Department for permission to seek a formal property appraisal of a potential site to construct a new Sun Valley Fire Station. Ms. Taylor provided Chief Bartley's evaluation of the current outdated fire station as well as his timeline of potential events and related financing considerations to construct a new fire station.

Motion: Approve hiring an appraiser for potential property purchase, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Stewart.

Commissioner Willard questioned what would happen to the current Sun Valley Fire Station when a new station was constructed.

Joe Kenmore, Director of the Office of Emergency Services stated unless there was an objection by the owner who donated the current site, the Bonito Fire Department wished to use the site for storage of equipment.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

12. 2015 Board of Registration Report

Whitney Whittaker, Chief Deputy Clerk provided a report on recent actions by the Lincoln County Board of Registration. Ms. Whittaker stated the Board of Registration convened on March 10, 2015 to review the list of 1787 voters defined by Federal and State Statute as eligible for removal through the purge process.

Ms. Whittaker reminded members and alternates for the Board of Registration were appointed by the Board of County Commissioners during the February Regular Meeting. Ms. Whittaker stated the three member Board of Registration convened with members Jack Nesbitt, Daryl Snyder and Nina Grunseth present.

Ms. Whittaker discussed the criteria developed by the Board of Registration for the review process. Ms. Whittaker stated the Board found no discrepancies nor lodged any objections to those listed and classified all 1787 voters as removable.

13. Approval or Disapproval of Safety Net Care Pool & Indigent Health Care Claims

Scott Annala, Indigent Health Care Administrator presented the Sole Community Provider/Safety Net Care Provider Pool claims for approval. Mr. Annala processed 30 claims with 29 recommended for approval and 1 recommended for disapproval for a monthly authorization of \$17,063. Mr. Annala stated the total approval for SCP/SNCP claims for Fiscal Year 2014-2015 to date was \$208,618 with a monthly average of \$20,862.

Mr. Annala presented the Indigent Health Care Payments request for the month and stated he processed 14 claims with 8 claims recommended for approval and 6 for disapproval for a total payment this month of \$4,886.50. Mr. Annala stated the total expenditure for IHC claims for Fiscal Year 2014-2015 to date was \$61,095.94 for an average monthly indigent claims payment of \$6,110. Mr. Annala estimated expenditures based on average monthly payments of approximately \$73,320 of a budgeted \$363,000 this fiscal year.

Motion: Approval and denial of the claims as indicated for SCP/SNCP and Indigent Health Care as recommended, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Willard.

Vote: Motion carried by unanimous vote (summary: Yes = 5).

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

SEE EXHIBIT B: Copies of the Sole Community Provider and Indigent Health Care Payments are attached hereto in reference thereto made a part hereof.

9. 9:00 A.M: Consideration and Action on Lodger's Tax Applications with backup material:

Ms. Taylor discussed the current cash balance of the Lodger's Tax Fund as being sufficient to cover the requests recommended for approval by the Lodger's Tax Committee. Ms. Taylor stated however should the Board of Commissioners approve any additional requests this Fiscal Year that action would necessitate a budget adjustment.

- a) Application Withdrawn for Golden Aspen Rally
- b) Application 1724 Lincoln Pageant & Festival
- c) Application 1723 Art Loop
- d) Application 1726 Ft. Stanton Live
- e) Application Withdrawn for The Frontier Trail
- f) Application 1725 Carrizozo Music

Motion: Approve Application 1724 for \$4000, Application 1723 for \$2,000, Application 1726 for \$2,000, and Application 1725 for \$1000, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

Vote: Motion carried by unanimous vote (summary: Yes = 5).

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

14. Permission to Auction Surplus Inventory by Resolution 2014-41

Ms. Taylor provided a list of obsolete inventory for approval to list for sale via online auction. Ms. Taylor stated the list included four vehicles from the Sheriff's Department in addition to a tire balancer and an older auto chassis from Emergency Medical Services (EMS). Ms. Taylor stated Mickey Howard of Assets and Information would solicit Elected Officials to review the items at the appropriate time.

Motion: Adopt Resolution 2014-41, **Action:** Approve, **Moved by** Commissioner Draper, **Seconded by** Commissioner Allen.

Vote: Motion carried by unanimous vote (summary: Yes = 5).

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

SEE EXHIBIT C: Copy of Resolution 2014-41 is attached hereto in reference thereto made a part hereof.

15. Resolution 2014-42 in Support of a Special Session to resolve the issues & pass the capital outlay legislation

Ms. Taylor discussed Senate Bill 159, the Capital Outlay Appropriations bill, which included approximately \$170 million in appropriations for projects statewide. Ms. Taylor stated a Senate Finance Committee substitute for Bill 159 increased appropriations to approximately \$275 million. Ms. Taylor stated the bill was amended again in the House Ways and Means Committee but there was insufficient time left in the legislative session to accomplish a reconciliation with the Senate.

Ms. Taylor stated due to the critical nature of capital outlay funding there was increasing support for the Governor to call a Special Session to approve capital outlay. Ms. Taylor presented the Resolution in support of a Special Legislative Session for consideration.

Motion: Adopt Resolution 2014-42, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Stewart.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

SEE EXHIBIT D: Copy of Resolution 2014-42 is attached hereto in reference thereto made a part hereof.

16. Lincoln County Alarm System Ordinance 2011-04 Permit Violations:

Curt Temple, Planning Director reminded Ordinance 2011-04 required individuals who possess a burglar alarm to obtain a permit annually from Lincoln County. Mr. Temple stated the individuals listed were in violation of the Ordinance due to non-payment or non-renewal of alarm permits and were therefore subject to action.

- a) Angel and Mary Salazar
- b) Michael and Deborah Miller
- c) Jesus and Brisa Garcia
- d) Charles Welch

Motion: Authorize the Attorney to prepare and file liens against Angel and Mary Salazar, Michael and Deborah Miller, Jesus and Brisa Garcia, and Charles Welch, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

Commissioner Draper questioned the purpose of the Ordinance. Mr. Temple explained the history and problems associated with false alarms particularly with multiple offenders. Mr. Temple stated the Ordinance which requires registration of all alarms also solicits valuable contact information which the Sheriff's Department utilized to deal with false alarms.

Commissioner Willard questioned the total number of alarm permits issued by Lincoln County. Mr. Temple stated the County issues between 900 to 1000 permits annually.

Vote: Motion carried by unanimous vote (**summary:** Yes = 5).

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

17. Manager's Report - continued

2. Building Updates:

Annex: Construction Industries Division conducted a preliminary inspection and approved the ADA bathroom improvements. The Manager stated there was sufficient first floor space to accommodate the District Attorney and the Historical Records Clerk.

Public Officials building: Work on individual heating and cooling units for each office was near completion.

Carrizozo Senior Center: The Manager reminded the project was partially funded by a CDBG grant of \$500,000 and prior Capital Outlay of \$240,000. The Manager reminded the receipt of an initial bid over the budgeted amount resulted in direction to revise plans and reissue the Request for Proposal. The Manager reported plans were revised accordingly and anticipated the project would move forward in the near future.

NMAC building inspection: The New Mexico Association of Counties conducted their annual site inspection last week resulting in some noncritical findings. The Manager stated findings included ceiling tiles showing water stains, storage of improper materials in utility rooms, and clear access to electrical breakers. The Manager stated staff was addressing issues and would report back to NMAC in 30 days.

3. **Hat's Off:** The Manager informed Pam Hall Allen, a longtime Lincoln County resident and high school coach, was nominated for and accepted into the National High School Coaching Hall of Fame. The Manager suggested presentation of a proclamation honoring Coach Allen at the next Regular Meeting.

4. Departmental Updates

a) Carl Palmer, Road Department Superintendent discussed the potential effects of SB 125 which limits the maximum speed limit on a county road without a posted limit to 55 mph. Mr. Palmer stated NMAC currently recommend County's not post signage on dirt roads. Sheriff Shepperd informed on roads not currently posted, speeds are limited to 35 miles per hour in a residential area or to the posted speed limit of the nearest highway.

10. 9:30 A.M.: PUBLIC COMMENT AND OTHER BUSINESS FROM COUNTY OFFICIALS

Rhonda Burrows, Clerk invited the Board of County Commissioners and the general public to attend a ceremony on May 9, 2015 at the White Oaks Cedarvale Cemetery to honor Charles H. McVeigh, Private Company B of the 8th Cavalry and a recipient of the Medal of Honor in 1869. Ms. Burrows explained Karen Mills, Historical Records Clerk received a request approximately two years ago for assistance in locating and verifying the burial of remains of this Medal of Honor recipient. Ms. Burrows stated Private McVeigh's remaining family in the area provided additional documentation for confirmation.

Robert Shepperd, Sheriff commented on the detrimental effects of HB 560 "Forfeiture Procedure and Reporting" signed by Governor Martinez and effective on July 1, 2015. Sheriff Shepperd discussed the current process for the seizure of assets acquired as a result of drug activity. Sheriff Shepperd stated his department did not act independently to seize assets but typically filed a civil forfeiture action in conjunction with a criminal case to afford due process. Sheriff Shepperd stated HB 560 does not prohibit seizure of assets but redirected any proceeds from asset sales from local law enforcement agencies to payment of attorney fees and to the State General Fund. Sheriff Shepperd speculated a decline in drug enforcement may occur as local law enforcement agencies would no longer have the revenue from asset forfeiture sales to conduct operations and would need to seek funding from other sources.

Bennie Long, Manager of the Smokey Bear Historical Park and event coordinator for Smokey Bear Days expressed appreciation for support received from Lodger's Tax funding. Ms. Long invited the Board of Commissioners and the public to enjoy the twelfth annual Smokey Bear Days on May 1st and 2nd of this year.

17. Manager's Report - continued

4. Departmental Updates - continued

b) Curt Temple, Planning Director presented a "Turn Around - Don't Drown" or "TADD" sign provided to Lincoln County through grant funding under the New Mexico Department of Homeland Security (NMDHS). Mr. Temple reported Lincoln County received 24 signs for 12 separate low water crossings in the County.

Mr. Temple stated a review of the newly revised map book for Lincoln County resulted in identification of additional roads for inclusion and the need to formally name some additional County maintained roads.

Mr. Temple reported thinning grant applications were submitted to the (NMDHS) for review and forward to FEMA. Mr. Temple stated staff were closing out the associated Education and Outreach FEMA grant and preparing submissions for reimbursement. Mr. Temple commented on the smaller number of participants who signed up for the thinning projects than originally anticipated. Mr. Temple attributed the lower numbers to a lack of participation from seasonal home owners. Mr. Temple anticipated the lower number of participants would result in a significantly lower final FEMA grant award than the initial request of \$3.5 million.

c) Joe Kenmore, Director of OES stated the last Education and Outreach Meeting held on April 14, 2015 had approximately sixteen people in attendance. Mr. Kenmore reported on two recent wildfires in the County and remarked on the potential need to adopt an Ordinance to govern the improper handling of fire.

Mr. Kenmore anticipated the Nogal Fire Department would see a benefit from the placement of new fire hydrants in the area during the department's ISO review. Mr. Kenmore also commented on the recent Emergency Medical Services conference in Ruidoso as being attended by a large number of New Mexico attendees as well as some from other states.

Commissioner Draper questioned the necessary steps to begin developing guidelines for proper handling of fire. Attorney Morel reminded Lincoln County has an Ordinance governing the improper handling of fire but suggested the Ordinance may need review and updating.

d) Punkin Schlarb, Finance Director informed she planned to attend a Department of Finance Authority budget workshop in conjunction with Treasurer's staff to review recent finance changes. Ms. Schlarb stated the County began the new audit process contracting with the same auditor for the same cost as last year. Ms. Schlarb stated she was also working on the Information Technology (IT) contract seeking a reduction in costs with an additional onsite service day. Ms. Schlarb reminded the preliminary budget would be presented at a Special Meeting on May 5, 2015.

Chair Stone recessed the Regular Meeting at 10:06:11 AM and reconvened at 10:21:14 AM.

5. Hubbard Grant: The Manager informed Lincoln County received a Hubbard Grant in the amount of \$6,250 for the purchase of communication equipment. The Manager stated Samantha Mendez and Joe Kenmore co-wrote the grant to purchase three portable communication repeaters for use in the field. The Manager invited those interested to attend a ceremony on May 30, 2015 at the Ruidoso Downs Race Track.

18. Water Issues/Forest/Wildlife Health Programs/Land and Natural Resources Advisory Committee (LANRAC)

Water Rights Notices: Ms. Taylor reported no new publications on the State Engineers website for Lincoln County. Ms. Taylor provided copy of recent correspondence from Attorney Kelly Cassels on behalf of Lincoln County to the State Engineer commenting on the department's failure to provide due process when approving the diversion of water rights without opportunity for those harmed to protest. Ms. Taylor stated no response was received from the State Engineer to date.

Secure Rural Schools (SRS) Expansion: Ms. Taylor commented on the expiration of the SRS program as of September 30, 2014; the lack of reauthorization by Congress, and the financial effects amounting to the loss of \$151,000 in funding for the Road Department and \$20,000 in funding for the partnership and activities with South Central Mountain RC and D. Ms. Taylor reported on April 15, 2015 Congress reauthorized the Secure Rural Schools program retroactively for Fiscal Years 2014 and 2015. Ms. Taylor anticipated receiving funding prior to the end of the County's Fiscal Year.

South Central Mountain RC and D: Rick Merrick, Community Forester stated no burns were conducted this last month and he did not anticipate any burning in the near future due to current weather conditions. Mr. Merrick stated he continued to engage in public outreach and education through various events such as the Ruidoso Home and Garden Show. Mr. Merrick stated he was reviewing the current list of applicants for the Lincoln County Cost Share program to conduct thinning and noted there was a waiting list for participation. Mr. Merrick stated through multiple programs \$363,656 was expended on thinning in Lincoln County this last year. Mr. Merrick informed the Little Bear Forest Reform Coalition was raising funds to purchase an additional electronic bulletin board for the Smokey Bear Ranger District office to heighten public awareness.

19. Capitan Culinary Arts Presentation

Ms. Taylor informed members of the Capitan Culinary Arts Program won a New Mexico State competition and were now eligible to represent Lincoln County in Washington, DC. Ms. Taylor stated the students were unable attend today's meeting but she would attempt to reschedule.

20. Approval of Fair Housing Month Proclamation

Ms. Taylor stated the New Mexico Department of Finance and Administration provided notice each local government was required to certify affirmation of implementation of fair housing practices by annually: 1) conducting a fair housing self-assessment; 2) developing a Fair Housing resolution or proclamation; and 3) conducting a fair housing activity. Ms. Taylor presented a proclamation recognizing April as Fair Housing Month. Ms. Taylor noted CDBG funding requests also required fair housing activities.

Motion: Approve the Lincoln County Fair Housing Month Proclamation, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Stewart.

Commissioner Willard questioned what type of fair housing activity the County conducted. Ms. Taylor stated fair housing information flyers were distributed to the public through the senior centers.

Vote: Motion carried by unanimous vote (summary: Yes = 5).

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

22. Award of Invitation to Bids:

Ms. Taylor detailed the bids received as follows:

- a) Bid 14-15-006 Chip Seal Bancroft Road in Capitan
 - 1. Blue Collar Construction \$154,203.00
 - 2. Mesa Verde Enterprises, Inc. \$127,514.00
- b) Bid 14-15-007 Chip Seal Biscuit Hill & Apple Blossom Roads in Ruidoso Downs
 - 1. Blue Collar Construction \$ 24,948.00
 - 2. Mesa Verde Enterprises, Inc. \$ 18,081.00
- c) Bid 14-15-008 Chip Seal Laughing Horse in Capitan
 - 1. Blue Collar Construction \$ 39,204.00
 - 2. Mesa Verde Enterprises, Inc. \$ 36,282.00
- d) Bid 14-15-009 Chip Seal Laughing Horse II in Capitan
 - 1. Blue Collar Construction \$ 74,052.00
 - 2. Mesa Verde Enterprises, Inc. \$ 63,907.00

Motion: Award to Mesa Verde Enterprises, Inc. Bid 14-15-006 for \$127,514; Bid 14-15-007 for \$18,081; Bid 14-15-008 for \$36,282; and Bid 14-15-009 for \$63,907, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Willard.

Commissioner Stewart clarified the roads identified were not within municipal limits. Carl Palmer, Road Department Supervisor stated the roads were county maintain roads only.

Commissioner Willard questioned how roads were selected for projects. Mr. Palmer stated he conducted inspections of roads, considered the number of complaints received and determined if the road or portion of the road served as a school bus route.

Commissioner Draper questioned the County's financial commitment for these projects. Mr. Palmer stated county match was 25% for these projects. Mr. Palmer reminded any remaining State funding after projects were completed was available for additional projects, subject to Commission approval.

Vote: Motion carried by unanimous vote (summary: Yes = 5).

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

23. Authorization to Schedule Public Hearing to Consider Other Outdated or New Lincoln County Ordinance

- a) Adoption of the Preliminary Budget, Fiscal Year 2015-2016
- b) Amend Ordinance 2014-07 – Collection of Solid Waste in Lincoln County by Ordinance 2015-03

Motion: Schedule a Public Hearing for the Regular Meeting of May 19, 2015 at 1:00 PM to consider the Preliminary Budget and amendment of Ordinance 2014-07, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Willard.

Vote: Motion carried by unanimous vote (summary: Yes = 5).

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

24. Consideration of Appointments and Removals from Boards/Commissioners /Committees:

- a) Planning Commission

No action.

- b) **Tabled**-Senior Citizens Olympic Committee

No action.

- c) Advisory Committee-Senior Citizens Program

Ms. Taylor reminded the new committee was approved during the March Regular Meeting. There was general consensus to instruct the Manager and Senior Services Director to identify and solicit potential members for the committee.

Chair Stone recessed the Regular Meeting at 10:51:09 and reconvened at 1:00:10 PM.

Chair Stone recessed the Regular Meeting and convened the Public Hearing at 1:00:15 PM.

21. 1:00 P.M.: Public Hearing to consider the following Ordinance:

- a) Amend Ordinance 2004-04 Lodger's Tax Ordinance by Ordinance 2015-02

Attorney Morel discussed the proposed changes to current forms and the suggested addition of a contractual agreement to the list of forms and documents required for the award and expenditure of Lodger's Tax Funds. Attorney Morel stated a contract was beneficial to "bind" the parties awarded funding to meet requirements set forth in the Ordinance.

Attorney Morel commended the Lodger's Tax Committee and in particular Sue Hutchinson for their extensive review of the current Ordinance and suggestions for improvements. Attorney Morel stated changes to the Ordinance as presented were approved by the Lodger's Tax Committee.

Commissioner Stewart suggested some refinement of the new language for clarification. Attorney Morel concurred with the suggestions.

Attorney Morel noted new language included a requirement to submit requests for Lodger's Tax funding utilizing the most recent application no later than four months prior to the event and a requirement to submit a request for reimbursement form within 90 days after the event occurred.

Chair Stone adjourned the Public Hearing and reconvened the Regular Meeting at 1:11:00 PM.

Motion: Adopt Ordinance 2015-02 with minor language changes and approve the associated forms and contractual agreement, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

Vote: Motion carried by unanimous roll call vote (summary: Yes = 5).

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

SEE EXHIBIT E: Copy of Ordinance 2015-02 is attached hereto in reference thereto made a part hereof.

24. Executive Session Pursuant to the Open Meetings Act: Discussion of all Threatened and/or Pending Litigation Section 10-15-1, Sub-Paragraph H.(7); and Discussion of

the purchase, acquisition or disposal of real property or water rights by the public body, Section 10-15-1, Sub-Paragraph H.(8).

Motion: To close the meeting for the purposes of an Executive Session to discuss Threatened and/or Pending Litigation pursuant to the Open Meetings Act, Section 10-15-1, Sub Paragraph H.(7) and the purchase, acquisition or disposal of real property or water rights by the public body, Section 10-15-1, Sub-Paragraph H.(8) and as follows:

1. *Cooper, Gale and DeBaca County News v. County of Lincoln, Sheriff of Lincoln County, et al.* D-1329-CV-200701364. Suit filed: October 15, 2007. Verified Complaint for Declaratory Judgment Ordering Production of Certain Records and Information. Hearing took place Dec. 18, 2013, and Stipulated Judgment was entered June 4, 2014 in favor of Ms. Cooper. Ms. Cooper filed an appeal June 10, 2014, and Judge John F. Davis was assigned Aug. 3, 2014.
2. *Greentree Solid Waste Authority v. Lincoln County D-1226-CV-2014-00095.* Suit filed May 1, 2014. Verified Petition for Declaratory and Supplemental Relief: Injunction. County was served May 14, 2014. Mr. Paul Melendres has been retained by the County. Hearing on All Pending Motions took place Nov. 20 before Judge Ritter, who found Mr. Beauvais had a conflict of interest and was disqualified from representing GSWA. GSWA has retained Robert Doughty as new counsel Dec. 13, 2014. Hearing regarding 1) GSWA's Motion First Amended Verified Emergency Motion Seeking Further Relief on GSWA's Request for Preliminary Injunction Concerning the Rate at which the County Will Bill and 2) Lincoln County's Motion for Sanctions is scheduled for May 12, 2015 at 9 a.m.
3. *Greentree Solid Waste Authority v. Lincoln County, et. al. D-0101-CV-2013-00104.* Suit filed January 9, 2013. Petition for Declaratory Judgment; Preliminary and Permanent Injunction. Mr. Beauvais filed an appeal Feb. 27, 2014. Ruling on Reconsidering Stay denied by Judge Singleton June 11, 2014. GSWA's Brief in Chief filed Sept. 9, 2014. Record Proper was filed Sept. 25, 2014. Alto Lakes Water and Sanitation District's and Lincoln County's Joint Response Brief was filed with the Court of Appeals Oct. 24, 2014. GSWA filed it Reply Brief Dec. 1, 2014. The case has been submitted to a panel of judges for decision and the County received Notice of Submission from the Court of Appeals Jan. 2, 2015.
4. *Water Rights Protests: New Mexico State Engineer Hearing Numbers: 14-039 and 14-041.* Protests of Applications 01300-1, 01300-2, 01300-3, 0826-2 into 0275 *et. al.* and H-272 *et al* (T) and H-50-1 into H-272 *et. al.* (T) filed July 15, 2013 pertaining to movement / transfer of water rights from the Hondo Valley to the Village of Ruidoso and the City of Ruidoso Downs. Docketing Order filed Sept. 18, 2014. Kelly Cassels/Sanders, Bruin, Coll & Worley, P.A. has been retained by the County, entered his appearance Sept. 22, 2014 and has responded in behalf of the County.
5. *Wesmax, Ltd. V. Paul Baca, Lincoln County Assessor D-1226-CV-2014-00188* Appeal of the Final Order from Lincoln County Valuation Protest Board. Appeal filed Oct. 8, 2014. Case assigned to Basham & Basham/Dwyer. Record of Appeal and Transcript of Proceedings was filed Oct. 23, 2014.

Tort Claims Notices Received or Threatened

2015

Cherry, Doris – Tort Claim Notice posted in Lincoln County News Jan. 1, 2015 stating possible Civil Rights Violation lawsuits regarding alleged Americans with Disabilities Act non-compliance in remodeling the Lincoln County Courthouse buildings.

McDaniel, Carl – Tort Claim Notice received Jan. 23, 2015 alleging violation of the Unfair Trade Practices Act and engaging in unfair or deceptive trade practices and/or unconscionable trade practices by GSWA.

UNM Hospital- Prins, Chad – Tort Claim Notice received Feb. 26, 2015 in which UNM Hospital seeks reimbursement of expenses incurred while Lincoln County Detention Center inmate Prins was on furlough.

Sehorn, Sean M. – Tort claim Notice received March 2, 2015 alleging Lincoln County Detention Center failed to provide adequate medical treatment during inmate Sehorn's incarceration.

Lavin, Erica L. and Rathgeber, Jack – Tort Claim Notice received March 2, 2015 alleging Constitutional Rights were violated resulting in wrongful termination.

Hanley, Constance – Tort Claim Notice received March 20, 2015 from Attorney John Sugg alleging violations of 42 USC section 1983, malicious prosecution, failure to investigate, defamation of character, libel and abuse of process.

***Capitan Iron Mine through A. Blair Dunn** – Threatened Litigation on April 1, 2015 against the County of Lincoln should Lincoln County require Capitan Iron Mine comply with Lincoln County Mine Ordinance 2009-01.

***Chavez, Billy** – Ordinance Violation: 2009-03 Regulating Refuse, Solid Waste and Litter in the County. March 10, 2015 certified letter mailed to Mr. Chavez giving him 30 days to dispose of debris on his property at 142 White Cat Road, San Patricio (Section 26, Township-10S, Range

16E, a tract of land lying in the NE 4SE4). April 10, 2015 the property was inspected and noted no progress had been made.

2014

Ramos, Aaron – Tort Claim Notice received from Mr. Ramos March 18, 2014 alleging his rights were violated during incarceration at Lincoln County Detention Center. Mr. Ramos alleges damages by not being granted detainee to detainee correspondence.

Millerden, Kenneth and Anita – Tort Claim Notice received May 9, 2014 alleging negligence from staff at Lincoln County Medical Center during prepartum care for their infant son.

Ogden, John D – Tort Claim Notice received May 26, 2014 alleging mistreatment while incarcerated at Lincoln County Detention Center on March 11, 2014.

Rounds, Christopher – Tort Claim Notice received June 4, 2014 alleging being held in Lincoln County Detention Center without being advised of his charges.

Herbert, Crystal – Tort Claim Notice received June 23, 2014 alleging false imprisonment, due process violations, unlawful detention of a minor, emotional distress.

Class Action – Tort Claim Notice received June 23, 2014 alleging false imprisonment, false arrest, deprivation of rights at Lincoln County Detention Center that arise with Immigration and Customs Enforcement charges.

Atwell, Stacey – Tort Claim Notice received June 25, 2014 alleging unlawful seizure of her two minor children during a request for a deputy to assist in keeping the peace.

McGarry, Sean – Tort Claim Notice received July 25, 2014 alleging wrongful arrest, false imprisonment, malicious prosecution, intentional or negligent infliction of emotional distress, abuse of process, wrongful termination and retaliatory discharge regarding discharge from the Capitan Police Department.

Ramos, Aaron – Tort Claim Notice received August 7, 2014 alleging lack of Due Process for inmates at Lincoln County Detention Center.

Lambert, David and Bonnie - Tort Claim Notice received Sept. 8, 2014 by attorney W. Chris Nedbalek alleging damage to Lambert property due to Mr. Rodney Bunsen using his own equipment to alter a platted County right of way without the authorization or knowledge of the County.

Rider, Edward Allen and Moorhead, Brennon – Tort Claim Notice received Oct. 20, 2014 by attorney W. Chris Nedbalek alleging Lincoln County Narcotics Enforcement Unit officers destroyed items in a home.

Caughron, Brittany and Anderson, Amie – Tort Claim Notice received Oct. 24, 2014 by attorney W. Chris Nedbalek alleging overcrowding of Lincoln County Detention Center as a violation of 8th Amendment Rights.

Ryen, Allen - Tort Claim Notice received Oct. 27, 2014 by attorney W. Chris Nedbalek alleging Mr. Ryen was exposed to unsanitary conditions at Lincoln County Detention Center.

Inmate Group – Tort Claim Notice received Oct. 27, 2014 by attorney W. Chris Nedbalek alleging overcrowding and unsanitary conditions at Lincoln County Detention Center.

McMurray, Cody – Tort Claim Notice received Nov. 6, 2014 by attorney W. Chris Nedbalek alleging lack of adequate medical care at Lincoln County Detention Center.

Caughron, Brittany and Anderson, Amie – Tort Claim Notice received Nov. 14, 2014 by attorney W. Chris Nedbalek alleging inadequate medical care and overcrowding at Lincoln County Detention Center.

Inmate Group – Tort Claim Notice received Nov. 14, 2014 by attorney W. Chris Nedbalek alleging overcrowding and unsanitary conditions at Lincoln County Detention Center.

Long, Cameron – Tort Claim Notice received Nov. 14, 2014 by attorney W. Chris Nedbalek alleging mistreatment by an Officer with Adult Probation and Parole.

McClarnon, Brian – Tort Claim Notice received Nov. 14, 2014 by attorney W. Chris Nedbalek alleging violations of U.S. Constitutional Amendment rights.

Diana Martwick, 12th Judicial District Attorney – Tort Claim Notice received Nov. 25, 2014 alleging lack of adequate office space provided by the County of Lincoln.

Inmate Group – Tort Claim Notice received Dec. 22, 2014 by attorney W. Chris Nedbalek alleging inmates were mistreated at Lincoln County Detention Center.

2013

Allen, Katherine Elizabeth - Notice of Tort Claim received Sept. 12, 2013 from Katherine Allen against Lincoln County Detention Center for alleged injuries sustained during transport.

Borrego, Albert - Tort Claim Notice received from attorney Gary Mitchell on June 14, 2013, alleging continued harassment to Albert G. Borrego by police while responding to a noise complaint at Mr. Borrego's residence on February 28, 2013, and a separate incident resulting in Mr. Borrego's arrest on March 5, 2013, due to an outstanding warrant, during which Mr. Borrego allegedly sustained injuries while in custody due to an existing broken back injury. Claim has been denied by NMAC.

Espinoza, Robert - Tort Claim Notice received from Robert Espinoza on June 4, 2013, alleging property damage from vehicle accident while Linda Mullins, driving the LC Senior Center meal delivery van ran off road hitting chain link fence, poles and railroad ties.

Harrisburg Documents- Attempts to recover Lincoln County documents illegally taken from the county. County Clerk Rhonda Burrows has been in contact with Harrisburg, PA in recovery efforts.

Montoya, Emilia L. - Tort Claim Notice received by attorney Freda Howard McSwane on April 23, 2013, alleging injuries sustained by Ms. Montoya when a physical altercation took place at the LCDC.

Ramos, Aaron - Tort Claim Notice received by attorney Robert J. Beauvais on April 18, 2013, (correspondence dated September 13, 2011) alleging concerns about Mr. Ramos' safety and welfare and violation of his U.S. Constitutional rights.

Silva, Elmo - Tort Claim Notice received from attorney Richard Marquez November 6, 2013. Alleges false imprisonment for Mr. Silva, who was sentenced in the 12th Judicial District Court to 38 years filed on July 3, 1990.

Action: Approve, **Moved by** Chair Stone, **Seconded by** Commissioner Stewart.

Vote: Motion carried by unanimous roll call vote (**summary:** Yes = 5).

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Chair Stone recessed the Regular Meeting and convened the Closed Session at 1:12:50 PM.

Chair Stone adjourned the Closed Session and reconvened the Regular Meeting at 3:24:40 PM.

Commissioner Draper attested that matters discussed in the closed meeting were limited to those specified in the motion for closure or in the notice of separate closed meeting.

26. Greentree Solid Waste Authority items for consideration/action:

- A. Re-negotiation of the current Joint Powers Agreement should the County of Lincoln elect to remain a full member of Greentree Solid Waste Authority. **Tabled**
- B. Potential Action on Rates for Solid Waste Collection Services in Lincoln County outside municipalities and Alto Lakes Water and Sanitation District by Resolution 2014-40 - **Tabled**
- C. Consideration of Options:
 - 1) Issue Third party Request for Proposal (RFP) for County of Lincoln Solid Waste Services. - **Tabled**
 - 2) Negotiation of Joint Powers Agreement and the status of the County of Lincoln should an RFP for a Third Party Contract for Services be sought.
- D. Consideration/Action of a possible advance of rate-payer funds from the County of Lincoln to Greentree Solid Waste Authority, and conditions for any such advance required by the County of Lincoln.
- E. Any and all other items pertaining to Greentree Solid Waste Authority and the County of Lincoln.

Commissioner Stewart, speaking as the County board member of GSWA, discussed recent actions by the GSWA Board including a general agreement to the terms of settlement presented today. Commissioner Stewart asked Mr. Lewandowski if GSWA had taken action to dismiss legal actions pending against Lincoln County.

Mr. Lewandowski stated as a consultant for GSWA he was not authorized to discuss matters discussed in GSWA's Executive Session. Mr. Lewandowski expressed belief should the Board of Commissioners agree to the terms of the settlement agreement presented today GSWA would dismiss all legal actions.

Motion: Reimburse GSWA \$89,382 for the months January through June contingent upon dismissal of all legal action and agreement to all other terms, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Draper.

Mr. Lewandowski reiterated his belief GSWA would meet the terms of the settlement agreement.

Commissioner Stewart withdrew his motion pending further discussion.
Commissioner Draper concurred and withdrew his second.

Mr. Lewandowski stated should reimbursement be delayed to a later date GSWA would suspend services to County residents beginning May 1, 2015.

Mr. Lewandowski stated revision of the Joint Powers Agreement (JPA) and other issues discussed in GSWA's Executive Session resulted in directions to the GSWA Attorney and staff to proceed with a request for reimbursement and revising the JPA, but noted completing some actions would require more time.

Stirling Spencer, former County Commissioner during the development of the initial JPA, expressed belief GSWA had an endemic problem related to operational expenses and management. Mr. Spencer stated the rate increases imposed over the last fifteen years were not properly supported. Mr. Spencer reminded when the County agreed to the initial JPA it was with understanding all costs might not be "proportional" but the municipalities would realize savings and economic benefits associated with a decline in illegal dumping. Mr. Spencer suggested the Board of Commissioners consider whether the settlement agreement presented today was just a "patch" or a long term solution.

Jeff Kaplan, Village of Ruidoso General Services Director reiterated concerns about any reduction in services and the potential strain on Village of Ruidoso services. Mr. Kaplan reminded Mr. Lewandowski of prior statements GSWA would not cut services.

Mr. Lewandowski responded his position was service would continue as long as GSWA could meet obligations. Mr. Lewandowski stated a moratorium for the purposes of resolution would not provide revenue to pay bills. Mr. Lewandowski concurred with Mr. Spencer's comments the initial intent of the JPA included understanding the municipalities would bear a disproportionate share of costs for certain services such as illegal dumping. Mr. Lewandowski reminded GSWA had reduced operational costs by \$500,000 and based on his percentage analysis of services the other entities were subsidizing County services.

Motion: Agree in principal to the list of proposed actions presented by GSWA, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Draper.

Vote: Motion passed (summary: Yes = 4, No = 1, Abstain = 0).

Yes: Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.
No: Chair Stone.

Mr. Lewandowski requested the Board of County Commissioners consider setting a Special Joint Meeting after the GSWA Board meeting on April to consider action.

Attorney Morel and Attorney Paul Melendres concurred acceptance of any formal agreement would require consideration and action in a Special Meeting.

Motion: Schedule a Special Meeting to consider action on a settlement agreement with GSWA, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Chair Stone.

Vote: Motion carried by unanimous vote (summary: Yes = 5).

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Chair Stone stated the key factor was preparation of a legal document for the Board of Commissioners to consider at the next Meeting.

27. Lincoln County Medical Center (LCMC) items for consideration/action:

- A. Consider options and approval/authorization of LCMC renovation and expansion.
- B. Consideration approval/authorization to re-negotiate terms of LCMC/Lincoln County Lease with Presbyterian Healthcare Services.
- C. Consideration approval/authorization to file application with New Mexico Finance Authority for the sum of \$25 million dollars.
- D. Consider/approval/authorization to retain Dekker, Perich, Sabatini to complete design plans and enter into contract negotiations.

Mr. Santos restated the list of options developed to address current conditions at LCMC.

Commissioner Stewart noted an increase in the estimated expense to be financed from \$25 to \$30 million.

Mr. Santos reminded some concern was expressed about the proposed amount of funding anticipated from philanthropy and grants. Mr. Santos suggested the proposal to finance \$30 was "optioned" to hedge against any lack of philanthropy in a timely manner. Mr. Santos informed NMFA had determined that any financing secured by a lease agreement would result in issuance of a taxable bond. Mr. Santos stated the issuance of a \$25 million taxable bond would result in a debt service of \$1.5 million annually for 30 years and similarly a \$30 million taxable bond would require a debt service \$1.796 million annually. Mr. Santos opined the County could meet either of these funding obligations without completely depleting annual health care revenues and without imposing any additional taxes.

Commissioner Stewart stated clearly the County need to take action based on the JPA certification requirements. Commissioner Stewart stated prior to any financial commitment the County needed to ascertain if the lease payment was "bondable".

Mr. Santos stated subsequent conversations with NMFA indicated the lease amount was bondable but there was a need for a contingency financing option to secure the loan due to the 180 day lease termination clause. Mr. Santos stated 40 to 50% of the payment amount would need to be secured by a separate source.

Commissioner Willard questioned if NMFA was the only source of financing considered by LCMC. Mr. Santos stated NMFA typically presented the most economical bonding opportunity for governmental agencies. Ms. Taylor informed she contacted RBC Capital and they had agreed to present some other bonding options.

Commissioner Draper stated support for the project but expressed concerns about commitment to \$25 or \$30 million in debt without researching all possible financing solutions including utilization of Gross Receipt Tax increments. Commissioner Draper expressed a desire to obtain additional public input on the process.

Attorney Morel questioned how NMFA might review any application which did not define a particular funding source. Attorney Morel questioned if the hospital lease would need revision prior to any application submission.

Mr. Santos stated NMFA agreed to review an application and consider the viability of utilizing the lease payment to secure financing. Mr. Santos advocated for adoption of a Resolution supporting the submission of an application with a renegotiation of the lease at a later date.

Motion: Approve the Renovation and Remodel option for the LCMC facility as presented, **Action:** Approve, **Moved by** Commissioner Willard, **Seconded by** Commissioner Allen.

Vote: Motion carried by unanimous vote (summary: Yes = 5).

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Mr. Santos suggested submitting an application to NMFA to determine the outcome of that process to analyze with other financing options.

Commissioner Willard questioned if the County Manager and County Attorney were comfortable with proceeding with the NMFA application option.

Ms. Taylor suggested RBC Capital be allowed to present other options prior to submission of any application. Attorney Morel suggested it was preferential for the County to deal directly with NMFA.

Motion: Schedule consideration of a Resolution and potential action for the next Special Meeting, **Action:** Approve, **Moved by** Commissioner Stewart, **Seconded by** Commissioner Allen.

Vote: Motion carried by unanimous vote (summary: Yes = 5).

Yes: Chair Stone, Commissioner Stewart, Commissioner Allen, Commissioner Draper, Commissioner Willard.

Patsy Sanchez, resident of Carrizozo and taxpayer, questioned the presence of a significant amount of funds on a prior LCMC "Combined Statement of Operations and Net Assets" in a fund titled "Doubtful Accounts". Ms. Sanchez stated she questioned the prior LCMC Administrator about the approximately \$8 million dollars in this fund on several occasions during past Commission meetings but received no response.

Dudley McCauley, Chief Financial Officer for LCMC stated the fund Ms. Sanchez referenced was a "reserve for self-pay accounts" which was no longer maintained. Mr. Santos stated he would

research the question and provided additional information during the local Community Advisory Meeting scheduled in the near future.

28. Signing of Official Documents

29. Next meetings:

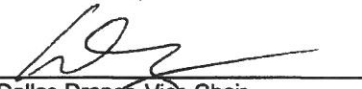
- a) May 5, 2015 - Special Meeting & Public Hearing – Preliminary Budget FY 15-16
- b) May 19, 2015 - Regular Commission Meeting

30. Adjourn

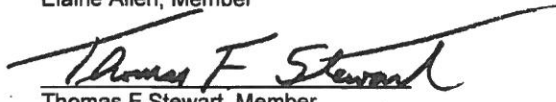
There being no further business to come before the Board of County Commissioners, Chair Stone adjourned the meeting at 4:37:21 PM.

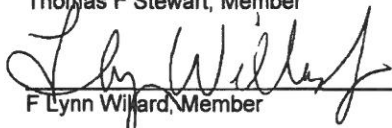
County of Lincoln
Board of County Commissioners


Preston Stone, Chair


Dallas Draper, Vice Chair


Elaine Allen, Member


Thomas F Stewart, Member


F Lynn Willard, Member

ATTEST:


Rhonda Burrows, County Clerk

May 19, 2015
Date Approved

